to secure an advantage to themselves at the expense of the corporation—the artificial body; and if it was a partnership who selected an agent to manage its affairs, a like duty would result to each member. As the judge says: "Directors are persons selected to manage the business of the company for the benefit of the shareholders. It is an office of trust which if they undertake it is their duty to perform fully and entirely." Because there is a certain organization designed for the facility of management, and a certificate of stock, interposed between the real party in interest and the persons selected to manage this interest for him, never seemed to the writer to be a very satisfactory reason for saying that the one selected as manager might withhold his special knowledge gained while manager in order to secure from the one who selected him a special advantage for himself. However, it must be conceded that at present the weight of authority is with the majority opinion. Other American cases so holding are *Carpenter* v. *Danforth* (1868), 52 Barb. 581; *Johnson* v. *Laflin* (1878), 5 Dill 65, 103 U. S. 800; *Hooker* v. *Midland Steel Co.* (1905), 215 Ill. 444, 74 N. E. 445, 106 Am. St. R. 170. The case of *Rothmiller* v. *Stein* (1894), 143 N. Y. 581, held that where directors upon inquiry gave false information to one who in reliance upon this failed to sell his shares to advantage, such shareholder had an action for the deceit. This perhaps would have been "insidious words or machinations" within the meaning of the Civil Code; it, however, would not be by "one of the contracting parties," and for that reason might not have been actionable under that Code. H. L. W.

IMPAIRING OBLIGATION OF CONTRACT WITH FOREIGN CORPORATIONS.—In error to the Supreme Court of the United States to review a judgment of the Supreme Court of Colorado, on a proceeding by *quo warranto,* forfeiting the right of the plaintiff in error, a foreign corporation, to do business in Colorado until it should pay the state certain fees. The Colorado statute provided that foreign corporations upon admission into the State should "be subjected to all the liabilities, restrictions and duties which are or may be imposed upon such corporations of like character organized under the general laws of the state, and shall have no other or greater powers."

Under a Colorado law then in force, domestic corporations had a life of twenty years. A statute passed about three years after the admission of the plaintiff in error, imposed an annual *license* tax upon all corporations, two cents upon every $1,000 of the capital stock of domestic corporations, and four cents upon a like basis in the case of foreign corporations. Any corporation failing to pay this tax should forfeit its right to do business in the State until, etc. *Held,* Mr. JUSTICE HOLMES, Mr. JUSTICE HARLAN and Mr. JUSTICE MOODY, dissenting, that the statute last mentioned did not impair the obligation of a contract existing between the plaintiff in error and the State. The dissenting justices assign no reason for their position. *American Smelting and Refining Co.* v. *People of the State of Colorado* (1907), 27 Sup. Ct. Rep. 198.

It seems that a State may not discriminate in respect to property taxation between foreign and domestic corporations, as such (BEALE, FOREIGN COR-

PORATIONS, § 466), foreign corporations being within the protection of the 14th Amendment to the Constitution of the United States. *Missouri Pacific Ry. Co.* v. *Mackey* (1888), 127 U. S. 205; *Pembina Consolidated Silver Mining & Milling Co.* v. *Penn* (1887), 125 U. S. 181. However, we have no concern with that provision, as the tax attempted to be imposed in the principal case is professedly a *license* tax. A foreign corporation is generally considered a mere licensee. *Doyle* v. *Continental Ins. Co.* (1876), 94 U. S. 535, 544. "The power and right of the State to exclude foreign corporations not engaged in interstate commerce, or in the furtherance of the business of the United States, from entering the State, includes the right to prevent such foreign corporations from continuing in business, and also includes the right to impose conditions upon such continuances." *Manchester Fire Ins. Co.* v. *Herriott* (1899), 91 Fed. 711. See also *Security Life Ins. Co.* v. *Prewitt* (1906), 202 U. S. 246, 26 Sup. Ct. Rep. 619. In the case of the *Home Ins. Co.* v. *City Council* (1876), 93 U. S. 116, a New York insurance company was admitted to do business in Georgia for one year. A few days later, a new law imposed upon it a license tax. It was held there was no impairment of a contract obligation. In the *Scottish U. & N. Ins. Co.* v. *Herriott* (1899), 109 Iowa 606, an English corporation of 20 years' standing in Iowa vainly contested the validity of a law imposing an annual business tax in the nature of a license tax (id. p. 614) on insurance companies, and discriminating between foreign and domestic corporations. Analogous to these is the case of *Mutual Life Ins. Co.* v. *Spratley* (1899), 172 U. S. 602.

The ENCYCLOPEDIA OF LAW AND PROCEDURE, Vol. 19, p. 1232, says: "And if there is not merely a license, but a grant or contract between a State and a foreign corporation, on the faith of which the corporation has expended money and begun operations, such contract cannot be impaired by subsequent legislation." To support this is cited, *Commonwealth* v. *Mobile & D. R. Co.* (1901), 64 S. W. 451, which in turn cites *New York, L. E. & W. R. Co.* v. *Penn* (1894), 153 U. S. 628, 643, 14 Sup. Ct. Rep. 952, 38 L. ed. 846. Investigation shows these to be cases where a foreign corporation was admitted by special law.

The case most like the present is *Wisconsin & Michigan Ry. Co.* v. *Powers* (1903), 191 U. S. 379, in which Mr. JUSTICE HOLMES (here dissenting) wrote the opinion. A Michigan law, passed in 1893, exempted from taxation for a period of ten years all railroad corporations which should thereafter build and operate north of a certain parallel, unless their gross earnings should exceed $4,000 per mile. A railroad company thereafter incorporated under the laws of Michigan and immediately sold its property, rights and franchises to a foreign corporation, which claimed the right to exemption from taxation under the law of 1893, and in the face of an amendatory act of 1897, imposing a tax on every railroad operating within the state. Mr. JUSTICE HOLMES admitted there was a consideration, viz., a detriment to the railroad, for the exemption contained in the act of 1893, but held the act of 1897 to be constitutional. "A distinction between an exemption from taxation contained in a special charter and general encouragement to all persons to engage in a certain class of enterprises is pointed out. * * * The broad ground of a case

like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out, it may open a chance for benefits to those who comply with its conditions, but it does not address them and therefore it makes no promise to them." This was approvingly cited by Mr. JUSTICE BREWER in *Powers* v. *Detroit and Grand Haven Ry.* (1905), 201 U. S. 557. "But the difference between that case and this is obvious. That arose on a general law in respect to taxation, this on a special act having reference to a particular corporation * * *." If *Wisconsin & Michigan Ry. Co.* v. *Powers* is to be reconciled with the principal case, it can only be on this (a doubtful) ground: the one law promised an absolute exemption, the other (in effect) the same rate as that imposed on domestic corporations. T. V. W.

MAY A LEGISLATURE PASS AN ACT ALLOWING ACTUAL EXPENSES TO CIRCUIT JUDGES WHOSE SALARIES ARE FIXED BY THE STATE CONSTITUTION?—In June, 1905, the legislature of Michigan passed an act "providing for the reimbursement of circuit judges for actual expenses incurred by them in holding court in counties other than in the county where they reside." Public Acts Mich. 1905, p. 317. Article IX, § 1, of the Constitution of Michigan, provides that "the judges of the Circuit Court shall each receive an annual salary of $2,500.00. They shall receive no fees or perquisites whatever for the performance of any duties connected with their office. It shall not be competent for the legislature to increase the salaries herein provided."

The question arises, Is the act constitutional? The question has not been adjudicated in the courts of the state. Two modes of solving the problem present themselves: (1) A comparison with like situations in other states, and (2) An inquiry into what is meant by "salary," "fee," and "perquisite."

An examination of the situation in other states shows that in only two do the constitutions definitely fix the salaries of circuit judges. In Florida, Article V, § 9, of the Constitution, provides that "the salary of each circuit judge shall be $2,500.00 per year." The Revised Statutes (1892), p. 474, § 1376, provide for the reimbursement for extra expense in holding court out of the circuit. There has been no adjudication up to 1904, so presumably the statute has been in force since 1892, with no question arising as to its validity. In Nebraska, Article VI, §§ 13 and 14, of the Constitution, provide that "circuit judges shall receive $2,500.00 and shall not receive any other compensation, perquisite or benefit, for or on account of his office in any form whatsoever." No statute granting expenses has been passed, nor has any question arisen in the courts of the state. In Florida the situation is apparently the same as that in Michigan, with the exception that "fee and perquisites" do not appear in the constitutional provision. In Nebraska, the language of the Constitution places particular stress upon the finality of the salary first given.

2nd. The meaning of the constitutional provision of Michigan, in question, may be made clear by an examination of the judicial scope of "salary,"